

State of Missouri
Office of Secretary of State

Case No. AP-05-09

IN THE MATTER OF:

ABSOLUTE HEALTH & FITNESS, INC.; and
MICRO CAP,

Respondents.

Serve at:

Absolute Health & Fitness, Inc.
C/o 2533 North Carson Street
Carson City, NV 89706

MICRO CAP
C/o State of Missouri
Commissioner of Securities
600 W Main
Jefferson City, MO 65109

**SUMMARY ORDER TO CEASE AND DESIST AND ORDER
TO SHOW CAUSE WHY CIVIL PENALTY AND COSTS
SHOULD NOT BE IMPOSED**

On the 24 th day of February 2005, for the Securities Division, Mary S. Hosmer, Assistant Commissioner of Securities submitted a petition for a Cease and Desist Order. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. Absolute Health & Fitness, Inc. (AHFI), is a Nevada corporation. AHFI's current registered agent is Laughlin International, Inc., 2533 North Carson Street, Carson City, NV 89706.
2. Micro Cap a/k/a MC purports to be an entity organized for the purpose of providing potential investors with information on companies it believes have potential for

growth.

3. As used in this document, the term "Respondents" refers to AHFI and Micro Cap.
4. On September 9, 2004, Micro Cap sent a broadcast facsimile to a Missouri resident recommending an investment in AHFI.
5. The facsimile document was entitled "Micro Cap", "Early Edition" and stated, among other things: "Buy 'AHFI' Low - Sell High!". "Better than 600% Return Potential In Near Future!!" and "Buy This Stock!"
6. Micro Cap's tout sheet went on to state:

"Absolute Health & Fitness is preparing to triple in size from their current base of 4 company owned and operated fitness centers to a total of 12 centers. The increase in market share will be as a result of acquisition, so expect the increase in revenue to be quick, as opposed to gradual. We expect the value of AHFI stock to jump as well.

AHFI's growth by acquisition is expected to double AHFI revenues to over \$23 million this year."

"The Opportunity is Now. The management team at Absolute Health and Fitness is an aggressive bunch that seizes upon opportunities as they present themselves .. This translates into a potential for quick increases in the value of the AHFI stock."
[emphasis in original]

7. In very fine print at the bottom of the tout sheet, Micro Cap stated: "[Micro Cap] has been retained to distribute this report on AHFI and has been paid to distribute this report by a third party."
8. The last line of the tout sheet stated, "If you received this fax in error and would like to have your number removed from our database, call toll free at 1-866-390-0963."
9. On October 4, 2004, the Division sent a letter to AHFI, c/o the third party agent of record, requesting a claim of exemption from registration or exception from definition upon which AHFI relied in offering unregistered securities or any claim that the securities were federal covered securities.
10. On October 4, 2004, the Division also sent a letter via certified mail to AHFI at 1381 Kildaire Farm Road, PMB 405, Cary, NC 27511, requesting a claim of exemption from registration or exception from definition upon which Respondents relied in offering unregistered securities or any claim that the securities were federal covered securities. The letter also requested additional information about the offers to Missouri residents and AHFI's relationship with Micro Cap.
11. By letter dated October 11, 2004, the listed agent of record replied that it had no knowledge or record of AHFI.
12. Sometime after October 2004, the agent of record for AHFI was changed on the corporation documents on file with the Nevada Secretary of State.
13. On or about December 9, 2004, the Division sent a letter to the newly listed third party agent of record for AHFI requesting a claim of exemption from registration or

exception from definition upon which AHFI relied in offering unregistered securities or any claim that the securities were federal covered securities.

14. To date, no response has been provided by AHFI to the Division's letters of inquiry.
15. No address or operating telephone number was given for Micro Cap and there was no information on file with the Missouri Division of Corporations for any company by this name. The investigator for the Securities Division did find a filing with the State of California Business records for "Micro Cap Partners, L.P" with an address of 431 Florence Street, Suite 200, Palo Alto, CA 94301.
16. On December 9, 2004, this Division sent a certified letter of inquiry to Micro Cap Partners, L.P. requesting information regarding its relationship with Micro Cap and requested a claim of exemption from registration or exemption from definition upon which it relied in offering investment advice in the State of Missouri.
17. The Division's December 9, 2004 inquiry to Micro Cap Partners, L.P. was returned on December 27, 2004, marked "refused."
18. A check of the records maintained by the Missouri Commissioner of Securities confirmed no registration or granted exemption from registration as an investment adviser for Micro Cap.
19. A check of the records maintained by the Missouri Commissioner of Securities confirmed no registration or granted exemption from registration as a broker-dealer or agent for Micro Cap.
20. A check of the records maintained by the Missouri Commissioner of Securities confirmed no registration, exemption or notice filing indicating status as a "federal covered security" for the securities offered by AHFI in the State of Missouri.
21. These securities were not federal covered securities.
22. In connection with the offer, sale or purchase of a security to Missouri residents, Respondents omitted to state the following material facts:
 - A. Respondents was not legally able to offer securities in the State of Missouri;
 - B. Respondents were offering unregistered, nonexempt securities in the State of Missouri;
 - C. Micro Cap was not legally able to offer investment advice in the State of Missouri;
 - D. The identity of the third party that paid Micro Cap to send this tout sheet to potential investors; and
 - E. The relationship of this third party to the offering, to AHFI and to Micro Cap.
23. This Order is in the public interest.

CONCLUSIONS OF LAW

1. §409.1-102 (26), RSMo Cumulative Supp. 2004, provides that "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. The solicitation as described in the above findings of fact constitutes an offer of securities.
2. §409.1-102 (28), RSMo Cumulative Supp. 2004, includes "stock" within the definition of a security. The stock offered by Respondents as described in the above findings of fact constitutes securities.
3. §409.4-401(a), RSMo Cumulative Supp. 2004, provides that it is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this act as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d). The conduct described in the above findings of fact constitutes a violation of this section.
4. §409.4-403, RSMo Cumulative Supp. 2004, provides that it is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this act as an investment adviser or is exempt from registration as an investment adviser under subsection (b). The conduct described in the above findings of fact constitutes a violation of this section.
5. §409.5-501, RSMo Cumulative Supp. 2004, provides that it is unlawful for a person, in connection with the offer, sale or purchase of any security, directly or indirectly (1) to employ a device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading or (3) to engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person. The conduct described in the above findings of fact constitutes a violation of this section.
6. §409.3-301, RSMo Cumulative Supp. 2004, provides that it is unlawful for any person to offer or sell any security in this state unless (1) the security is a federal covered security; (2) the security, transaction, or offer is exempted from registration under sections 409.2-201 to 409.2-203; or (3) the security is registered under this act. The conduct described in the above findings of fact constitutes a violation of this section.
7. §409.5-503, RSMo Cumulative Supp. 2004, provides that the person claiming an exemption, exception, preemption or exclusion has the burden of proving its applicability. As described in the above findings of fact, Respondents failed to prove any exemptions, exceptions, preemption or exclusions.
8. §409.6-602(b), RSMo Cumulative Supp. 2004, provides that, for the purpose of an investigation under the act, the Commissioner or its designated officer may administer

oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements and require the production of any records that the commissioner considers relevant or material to the investigation.

9. §409.6-604(a), RSMo Cumulative Supp. 2004, provides:

If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, the commissioner may:

1. Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary and appropriate to comply with this act;
2. Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 409.4-401(b)(1)(D) or (F) or an investment adviser under section 409.4-403(b)(1)(C); or
3. Issue an order under section 409.2-204

10. §409.6-604(d), RSMo Cumulative Supp. 2004, provides:

In a final order the commissioner may impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation.

11. Omitting to state a material fact necessary to make the statement made not misleading, in connection with the offer, sale or purchase of a security, as described in the above findings of fact, constitutes an illegal act, practice or course of business under §409.6-604(a), RSMo Cumulative Supp. 2004.
12. The offer or sale of unregistered securities as described in the above findings of fact constitutes an illegal act, practice or course of business under §409.6-604(a), RSMo Cumulative Supp. 2004.
13. Transacting business in this state as an investment adviser as described in the above findings of fact constitutes an illegal act, practice or course of business under §409.6-604(a), RSMo Cumulative Supp. 2004.
14. Transacting business in this state as a broker-dealer as described in the above findings of fact constitutes an illegal act, practice or course of business under §409.4-401(a), RSMo Cumulative Supp. 2004.
15. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. §409.6-604(a), RSMo Cumulative Supp. 2004.

ORDER

NOW, THEREFORE, it is hereby ordered that Respondents, their agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order are prohibited from:

- A. Violating or materially aiding in the violation of §409.4-401(a), RSMo Cumulative Supp. 2004, by acting as an unregistered broker-dealer;
- B. Violating or materially aiding in the violation of §409.4-403, RSMo Cumulative Supp. 2004, by acting as an unregistered investment advisor;
- C. Violating or materially aiding in the violation of §409.3-301, RSMo Cumulative Supp. 2004, by offering or selling any security that is not registered, unless the security is a federal covered security or has an effective exemption from registration;
- D. Violating or materially aiding in the violation of §409.5-501, RSMo Cumulative Supp. 2004, by omitting to state, in connection with the offer, sale or purchase of securities to Missouri residents:

- 1. That Micro Cap was not legally able to offer investment advice in the State of Missouri;
- 2. That Respondents are not legally able to offer securities in the State of Missouri;
- 3. That the securities offered by Respondents are not registered in the State of Missouri;
- 4. Information about the identity of the third party that paid Micro Cap to send this tout sheet to potential investors; and
- 5. Information about the relationship of this third party to the offering, to AHFI and to Micro Cap.

IT IS FURTHER ORDERED that the Enforcement Section has petitioned for civil penalties, and specifically, the award of \$3,000, jointly and severally, against each Respondent in this proceeding. The commissioner will issue a final order awarding this penalty, unless Respondents request a hearing and show cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that the Enforcement Section has petitioned for costs of this investigation against each Respondent in this proceeding. The commissioner will issue a final order awarding the actual costs of this investigation, unless Respondents request a hearing and show cause why these costs should not be imposed.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,

MISSOURI THIS 25TH DAY OF FEBRUARY, 2005.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
DAVID B. COSGROVE
COMMISSIONER OF SECURITIES